

THE ACQUISITION OF SHARES OF AN INDONESIAN PRIVATE COMPANY POST THE ENACTMENT OF THE NEW COMPANY LAW

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Abstrak

A new company law, Law No. 40 of 2007 was enacted on 16 August 2007 replacing the 1995 company law. No implementing regulations have been issued yet, including on acquisitions. Under Law No. 40 of 2007, a company can be acquired in one of two ways: (i) through the Board of Directors of the target company (Indirect Acquisition), or (ii) through a direct purchase of shares from existing shareholders (Direct Acquisition). For an acquisition, including a Direct Acquisition, the company, the acquirer and the seller must complete certain procedures. This has caused even a Direct Acquisition, which might seem quite straight forward, to become time consuming and involve a lot of paperwork. Outstanding issues under Law No. 40 of 2007 regarding the acquisition of a private company, are among others, an unclear definition of 'Acquisition', whether notification to the creditors is still required as previously, what information must be provided in the announcement of the Direct Acquisition, and whose Board of Directors should publish the announcement. Law No. 40 of 2007 (or existing government regulations under the previous company law) does not provide any sanctions for non-compliance, but risks worth taking into account are that creditors (especially those who stand to suffer a loss due to the acquisition) can always argue that the acquisition has not been completed properly according to the law, and the Boards of Directors and Commissioners of the company may be held personally liable for any loss suffered by the company. These outstanding issues may hamper investments in Indonesian companies. They must therefore be addressed urgently, especially given the current economic situation of Indonesia that requires more investments.